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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,671	02/15/2002	Ronnie J. Bermann	1831-1	2661
7590	09/02/2003			3
John S. Egbert Harrison & Egbert 7th Floor 412 Main Street Houston, TX 77002			EXAMINER	
			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 09/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	10/075671	Applicant(s)	BERMANN
Examiner	S. WEINSTEIN	Group Art Unit	1761

AS3
—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on _____

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) _____ are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. _____.

Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brodesser (2,157,476) in view of Young (5,860,587), Mayeaux (3,481,458) and Atwood (2,248,843), further in view of Legge (2,162,224), Clark (4,821,906) and Wilson (5,353,956).

In regard to claim 1, Brodesser discloses a device that would be capable of dispensing sandwiches or any other comestible comprising a tubular body having a slot (10) extending longitudinally along and through a wall and a disk (6) positioned interiorly of the tubular body, said disk member having an arm (7) extending outwardly therefrom, through said slot. It is noted that the device is recited as capable of dispensing sandwiches. The sandwiches are not positively recited. As noted above, Brodesser would be capable of dispensing any product, edible or inedible, that is dimensioned to fit in the body. Brodesser discloses that the device allows one to expose the food sequentially or segmentally as one consumes it by moving the food via the arm and disk. This is precisely applicant's objective as well. Although Brodesser's preferred product is ice cream, Brodesser teaches comestibles in general can be dispensed by such a device. Young, Mayeaux and Atwood are relied on to teach that it was well established to provide sandwiches in devices which allowed one to elevate or expose the sandwich periodically as it is consumed. Legge, Clark and Wilson are relied on as

further evidence that it was notoriously old to employ followers with arms to dispense products from a holder by allowing the arms to move along a slot in the holder. Claim 1 recites that the tube has an oval cross-section. The particular cross section of the tube is seen to have been an obvious matter of design. Brodesser, for example, discloses that any cross section can be used (page 1, col. 2, para. 5). The cross-section would also be an obvious function to some degree of the cross section of the product to be dispensed if one wanted to fill the space defined by the holder. In regard to claims 1-6, Brodesser discloses a body that is flexible, a closed end with the disk positioned adjacent the closed end, two slots extending through opposite sides of the tubular body, and an arm in each slot.

Claims 7-10, 12-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Davis (3,036,702) in view of Nageotte (2,356,874), Tregilgas (2,885,110) and Kocharian (4,350,712).

Claim 7 recites that the device has a guide rod and claim 8 has a plurality of fixing elements to cause the product to be dispensed to desired positions relative to the device. As evidenced by Davis, it is notoriously old to provide dispensing devices with ratchet type guide rods and fixing elements so that a product to be dispensed can be moved up to a certain position and retained at that position. Nageotte, Tregilgas and Kocharian are further evidence of such devices in dispensing type apparatus. All of these references, like Brodesser, are directed to push-up style dispensing devices. To modify Brodesser and the combination and add a guide rod and fixing elements for its

art recognized and applicant's intended function would have been obvious. In regard to claim 9, the art taken as a whole (e.g., Davis) shows a rod that extends less than the entire length.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Simmons (4,955,572), Marbe (5,050,759), Cummings (6,260,731) and Sharkey (5,429,262).

Claim 11 recites that the tubular body includes a spring hook. As disclosed, this is for attaching the body to another body, Simmons, as further evidenced by Marbe, Cummings and Sharkey are relied on to teach it was well established to associate a hook, spring or otherwise with a food related article for attachment to a second article and to modify the combination for its art recognized and applicant's intended function would have been obvious.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
August 14, 2003

Steve
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/2/03